Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive	)	
Auctions	)	

REPLY COMMENTS OF AT&T

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I. INTRODUCTION

AT&T Services Inc. ("AT&T"), on behalf of the subsidiaries and affiliates of AT&T Inc. (collectively, "AT&T"), hereby submits the following reply comments in response to the Federal Communications Commission's ("Commission") Public Notice ("*Public Notice*") in the above captioned proceeding.[1] The *Public Notice* sets forth a framework for defining when a 600 MHz band licensee "commences operations" in its licensed spectrum, which becomes the deadline for secondary and unlicensed users to cease operations in the licensed area. As the record in this proceeding reveals, establishing a transitional framework that is clear and easy to apply will be critical to ensuring the efficient deployment of wireless services in the repurposed broadcast spectrum. AT&T continues to believe that the Commission should define "commences operations" broadly and plainly to provide strong and clear protection for licensees' exclusive use rights as the reallocated spectrum is transitioned.

Implementing the straightforward and simple framework for clearing the 600 MHz spectrum advocated by AT&T will ultimately inure to consumers' benefit. By providing licensees with prompt and easy access to the spectrum they acquire during the incentive auction,

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[1] *Comment Sought on Defining Commencement of Operations in the 600 MHz Band,* Public Notice, FCC 15-38 (Mar. 26, 2015) ("*Public Notice*").

the Commission will take an important step toward enabling the thriving wireless ecosystem Congress envisioned when it enacted the Spectrum Act. As AT&T and others have noted, the Spectrum Act affords almost no protections for secondary Low Power Television ("LPTV") uses and expressly prohibits unlicensed services from causing harmful interference to licensed users. While some secondary and unlicensed operators may provide laudable services to the public, in Congress's judgment such services are not to be protected during the 600 MHz band's reallocation for exclusive uses. Consistent with this directive, the Commission should not interpret "commence operations" in this proceeding to effectively rewrite the Spectrum Act, granting secondary and unlicensed users a significant spectrum windfall.

To accomplish the Spectrum Act's important objectives, the Commission should require secondary and unlicensed users to cease operating in the repurposed spectrum at a date certain: no later than the end of the post-auction transition period of 39 months. A licensee should also be able to clear spectrum in advance of this end date by providing 120 days' notice of its good faith intent to begin any radiofrequency transmissions anywhere in a given Partial Economic Area ("PEA"). A single notice should trigger relocation obligations throughout a PEA. Finally, as an additional safeguard, the Commission should establish an expedited process to handle any issues that may arise with operators who fail to timely vacate the PEA.

AT&T reiterates its concern that the *Public Notice*'s proposed approach to transitioning the 600 MHz band would accord secondary and unlicensed users remarkable and unprecedented rights to freely access spectrum exclusively licensed—at a cost of billions of dollars—to others without so much as a lease or even the consent of the licensee. The record shows that the proposed approach would impose unreasonable burdens upon primary licensees, diverting resources from wireless deployment efforts to clearing purchased spectrum in an ad hoc and

fragmented process. Moreover, the *Public Notice's* transition framework is contrary to Congress's stated goal of facilitating quick spectrum reallocation for commercial mobile services. The Commission can best achieve the Spectrum Act's goal of facilitating rapid wireless deployment throughout the 600 MHz band by pursuing the simple and straightforward framework advocated by AT&T in this proceeding. The Commission has historically cleared reallocated bands with similar concrete guidelines, and there is no reason to depart from that approach here.

II. THE RECORD REFLECTS SUPPORT FOR ADOPTING AT&T'S SIMPLIFIED APPROACH TO DEFINING THE TERM "COMMENCE OPERATIONS"

In its initial comments, AT&T proposed a clear and efficient framework for transitioning operations in the 600 MHz band to licensed wireless uses.[2] In particular, AT&T proposed that all secondary and unlicensed users should be required to cease operations in the band at a specific date: no later than 39 months after the issuance of the *Channel Reassignment Public Notice*.[3] Further, AT&T proposed allowing a 600 MHz licensee to clear licensed spectrum in advance of that transition date by providing secondary and unlicensed users with 120 days' notice of its good faith intent to commence operations in a PEA. A single notice should apply throughout a licensee's PEA, requiring all secondary or unlicensed services to cease operating

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[2] *See* Comments of AT&T, GN Docket No. 12-268, at 3-4 (May 1, 2015) ("AT&T Comments").

[3] The *Channel Reassignment Public Notice* is expected to mark the conclusion of the incentive auction, announcing the auction results and detailing the repacking process. *Public Notice* ¶ 4, n. 7.

within 120 days of the notice.[4] In this framework, "commencing operations" should mean beginning any radiofrequency transmissions in the 600 MHz band anywhere in a given PEA.

To further facilitate a smooth band transition, the Commission should send secondary and unlicensed users a letter after the auction closes notifying such users that they should begin immediate preparations to clear out of the spectrum.[5] This early notice will ensure that secondary and unlicensed users have ample time to take any advance steps necessary to be able to cease operations in the band within the 120 day notice period. To resolve issues that may arise with operators lingering beyond the applicable transition date, the Commission should establish an expedited clearing procedure. Under this simple approach, secondary and unlicensed users would be required to clear out of the band at the end of the 39 month post-auction transition period or within 120 days' notice of a licensee's intent to commence operations, whichever comes first.

AT&T's proposal heeds commenters' calls for a transition framework that is "clear, consistent, and actionable."[6] As CTIA observes, "it is essential that the Commission adopt a standard that is readily understood by all stakeholders and leaves no doubt as to the regulatory obligations of affected parties."[7] With clear and simple criteria as guideposts, AT&T's proposal would provide 600 MHz licensees with much needed certainty as they embark upon the

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4 *See* Comments of CTIA – The Wireless Association®, GN Docket No. 12-268, at 9 (May 1, 2015) ("CTIA Comments").

5 For secondary licensees, the letter should also require licensees to correct any licensing information in CDBS for their stations, as well as certifying the operational status of their facilities. If a secondary licensee is unable to certify that it is currently operational, it should be required to demonstrate why its license should not be canceled.

6 Comments of Microsoft Corp., GN Docket No. 12-268, at 1 (May 1, 2015) ("Microsoft Comments").

7 CTIA Comments at 2.

otherwise complex task of deploying wireless services in the 600 MHz band.[8] To this end, the record reflects support for adopting an approach, such as AT&T's, that provides a definite deadline for transitioning the 600 MHz band along with a simple notice structure for clearing the spectrum ahead of time.[9]

Consistent with the dictates of the Spectrum Act, AT&T's proposal advances congressional intent. Congress granted the Commission incentive auction authority under the Spectrum Act for a narrow and specific purpose: reallocating broadcast spectrum for exclusive, licensed uses. In doing so, Congress declined to protect secondary and unlicensed operations in the repurposed 600 MHz spectrum.[10] Indeed, the Spectrum Act offers LPTV stations few to no rights at all during the incentive auction repacking process.[11] Likewise, unlicensed operations are only permitted in the guard bands so long as such use does not cause "harmful interference to licensed services."[12] While Congress intended to establish a thriving wireless ecosystem throughout the 600 MHz band, it did not contemplate fostering a spectrum sharing environment riddled with protections for secondary and unlicensed operations.[13]

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8 *See id.* at 5 (discussing the unique characteristics of the 600 MHz band that make interference-free testing critical).

9 *See id.* at 6 (explaining that "commence operations" should mean "the moment when a wireless carrier initially transmits on its licensed spectrum.").

10 *See* 47 U.S.C. § 1454(c), (e) (contemplating unlicensed services in the guard bands only); 47 U.S.C. §§ 1401(6); 1452(b)(2) (protecting the rights of only full power and Class A broadcasters to continue operations in the post-auction environment).

11 *See* 47 U.S.C. § 1401(6) (omitting LPTV stations from the definition of "broadcast television licensee").

12 *See id.* § 1454(c), (e).

13 For this reason, commenters' calls for adopting a "use it or share it" approach to the 600 MHz band are misplaced. *See, e.g.*, Microsoft Comments at 1.

The Commission should not essentially rewrite the Spectrum Act at this late stage by creating additional spectrum rights for secondary and unlicensed users that Congress did not envision.[14] Rather, the Commission should remain faithful to the Act's overarching purpose by allowing licensees to promptly access purchased spectrum without unprecedented regulatory burdens. If wireless carriers are to achieve Congress's goal of facilitating rapid, efficient, and robust wireless deployment in the 600 MHz band, licensees "must be able to access their spectrum free from impediments, without unnecessary procedural burdens or processes."[15] Incumbent users who did not have any license rights prior to the spectrum reallocation should not gain such rights now by being permitted to linger in the reallocated and reassigned spectrum.[16] Simply put, a licensee should not be placed in the untenable position of repeatedly seeking the permission of third parties to use its exclusively licensed spectrum.[17] Nothing in the Spectrum Act contemplates such a result—nor could it—as the result defies the core principles of exclusive use licensing.

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[14] *See Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d 1060, 1068 (D.C. Cir. 1998) (cautioning agencies may not "rewrite" statutory provisions); *Louisiana Chemical Ass'n v. Bingham*, 657 F.2d 777, 779 (5th Cir. 1981) ("[T]he role of the agencies remains basically to execute legislative policy; they are not more authorized than are the courts to rewrite acts of Congress.").

[15] CTIA Comments at 4.

[16] Such a result is particularly illogical given that previously *licensed* incumbents (*i.e.* full power and Class A television stations) must cease operations at the end of the post-auction transition no matter what. *See Public Notice* ¶ 3.

[17] Unnecessarily encumbering licensees or complicating deployment also runs the risk of negatively impacting spectrum valuations.

III. THE COMMISSION SHOULD NOT ADD COMPLEXITY TO THE 600 MHZ BAND TRANSITION BY ADOPTING A BURDENSOME AND FRAGMENTED APPROACH TO SPECTRUM CLEARING

As AT&T has explained, 600 MHz licensees' primary use rights will be undermined if the Commission adopts the complex and technical proposal in the *Public Notice* to determine whether a licensee's operations have "commenced."[18] Even worse, some commenters appear to take the *Public Notice's* proposal a step further, suggesting that "commence operations" should mean "where the new licensee is providing service."[19] For example, the National Association of Broadcasters ("NAB") argues that site commissioning tests are the "appropriate" signal of commencement of operations because such tests "reflect[] a significant capital investment," and thus indicates a licensee's "intent actually to begin providing commercial service in the immediate term."[20] The Commission should reject such arguments.

As an initial matter, the notion that licensees will not be committed to deploying service in the band is particularly absurd where, as here, licensees will have spent huge sums—some in the billions of dollars—to acquire the spectrum in the first place. What is more, nothing in the Spectrum Act even remotely suggests that a licensee must make a significant capital investment in deployment—let alone provide actual service—before it can freely access its exclusively licensed spectrum in a given market. Nor does the Commission's traditional approach to

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[18] *See* AT&T Comments at 6-10. Under the *Public Notice's* proposal, secondary and unlicensed users may operate "indefinitely" in licensed 600 MHz spectrum until a licensee provides notice that it intends to "commence operations." *Public Notice* at 4-5. A licensee's operations would be deemed to commence only "after a cell site has been fully constructed, with all base station equipment, antennas, feed systems, and other hardware installed, and with all power systems and backhaul connectivity installed and operational." *Id.* at 5.

[19] Comments of the Wireless Internet Service Providers Association, GN Docket No. 12-268, at 4 (May 1, 2015) ("WISPA Comments").

[20] Comments of the National Association of Broadcasters, GN Docket No. 12-256, at 2 (May 1, 2015) ("NAB Comments").

exclusive use licensing support the heightened standard advanced by some of the commenters in this proceeding.[21] As AT&T has explained, the Commission historically has not preserved for secondary or unlicensed users substantial rights to use spectrum that has been purchased at auction for a bidder's exclusive use.[22] Recognizing that such an approach would delay and hinder licensees' testing and ultimate service deployments—an outcome plainly contrary to the public interest—the Commission has afforded licensees prompt and straightforward access to reallocated spectrum.[23] There is no reason to diverge from this approach here, especially given the Spectrum Act's mandate to help alleviate the sky-rocketing demand for mobile broadband.[24]

Moreover, adopting the *Public Notice's* proposal would produce an anomalous result: unlicensed users operating in the guard bands would be afforded more protection than primary wireless licensees. In particular, the *Public Notice* proposes allowing unlicensed operators to immediately and automatically access the duplex gap and guard bands 39 months after the *Channel Reassignment Public Notice* is issued.[25] As CTIA notes, it would "defy logic" to allow

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[21] *See* WISPA Comments at 4; NAB Comments at 2.

[22] AT&T Comments at 4-5; s*ee also Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television*, Second Report and Order, 26 FCC Rcd 10732 ¶ 36 (2011) ("Second Low Power TV Order") (requiring LPTV operators to "cease operation[s]" within "120 days" of receiving notice that a wireless licensee intends to "initiate or change operations"); *id.* ¶ 23 (setting a date certain for clearing the 700 MHz band).

[23] With the 600 MHz band's unique frequency environment, unimpeded access to licensed spectrum will be essential for pre-deployment testing that is as interference-free as possible. *See* CTIA Comments at 4-6.

[24] *See Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, WT Docket No. 12-269, GN Docket No. 12-268, ¶ 2 (Jun. 2014) ("Mobile Spectrum Holdings Order") ("Skyrocketing consumer demand for high-speed data is increasing providers' need for spectrum at an unprecedented rate.").

[25] *See Public Notice* ¶ 4, n. 11 (providing that secondary licensees operating in the guard bands "must cease operations on those frequencies no later than the end of the Post-Auction

unlicensed users to easily clear the guard bands by a date certain while wireless licensees are required to navigate burdensome and time-consuming criteria to clear the spectrum they spent massive amounts to acquire.[26] Even NAB agrees, noting that the *Public Notice* "continues a disturbing and unprecedented trend of elevating unlicensed operations" above other spectrum uses.[27] Unlicensed operators, paying nothing for spectrum access, should not have superior exclusion rights compared to primary wireless licensees who have purchased exclusive rights. The Commission should correct this incongruity by applying a straightforward framework throughout the entire 600 MHz band that allows licensees to access their licensed spectrum with ease.

Along these lines, to clear licensed spectrum, licensees should not be required to send multiple notices throughout a single PEA once it intends to commence operations, *i.e.*, to begin any radiofrequency transmissions in the 600 MHz band anywhere in the PEA. A single notice of intent to commence operations should trigger relocation obligations throughout the *entire* PEA.[28] The benefits of a single notice process compared to a piecemeal notice process are clear. It will promote the public interest by avoiding counterproductive administrative complexity, thereby facilitating rapid and efficient deployment of wireless services throughout the band.[29] Allowing a single notice to cover the entire PEA in question is also consistent with the Commission's well-

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Transition period . . . and will be required to cease operating prior to that date if any 600 MHz Band licensee has notified them that their operations would be likely to cause harmful interference").

[26] CTIA Comments at 4.

[27] NAB Comments at 4.

[28] *See* CTIA Comments at 7-8 (agreeing with AT&T that commencement of service notices should apply at the PEA level).

[29] *See id.* at 8.

reasoned selection of PEAs. The Commission adopted a PEA licensing framework because it would "promote simplicity and speed," allowing wireless providers to obtain "a geographic license area that better matches their service area."[30] In doing so, the Commission rejected other, arbitrary licensing frameworks that would result in "inefficient service areas."[31] Requiring licensees to provide notice covering arbitrary subdivisions of PEAs would undermine these carefully considered benefits, resulting in the same inefficiency that the Commission endeavored to avoid. To allow licensees to take advantages of the "economies of scale" the Commission envisioned when adopting the PEA framework, licensees should only be required to send a single notice per PEA.

Finally, the Commission should proceed with extreme caution in relying on TV database administrators to coordinate licensees' commencement of operations and spectrum clearing efforts. To provide notice to unlicensed users, the *Public Notice* appears to contemplate licensees notifying "any of the TV bands database administrators when and where it plans to commence operations."[32] Some commenters have suggested that the Commission additionally require licensees to provide database administrators with "polygonal depiction[s]" representing the licensee's "actual planned area of operation."[33] Under this approach, licensees would have a

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30 *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 ¶ 73 (2014) ("*Incentive Auction Report and Order*").

31 *Id.*

32 *Incentive Auction Report and Order* ¶ 681; *see also Public Notice* ¶ 4.

33 WISPA Comments at 6.

"continuing obligation to provide information to the database administrators to provide notice of new areas of operation or areas where licensed service is discontinued."[34]

As an initial matter, the proposal that primary licensees maintain public records of their planned service deployments raises significant competitive issues. The precise nature of carriers' service expansions has typically been closely held and treated confidentially. Allowing other carriers in the market access to anticipated 600 MHz deployments would provide an undue, and unwarranted, advantage in allowing them to respond to coverage-based competition.[35]

As AT&T has further noted, serious concerns have been raised about the ability of database administrators to manage complex spectrum environments. NAB recently filed a petition alleging that the current TVWS database is rife with substantial errors, including widespread inaccurate data.[36] To the extent database administrators are expected to manage the complex 600 MHz ecosystem, the Commission should be certain that the operative database provides reliable location, device, and contact information. In any event, licensees should not be under any sort of continuing obligation to provide updated information about the precise areas in which any of its radiofrequency transmissions in the 600 MHz band are occurring in its exclusively licensed spectrum.[37] Imposing this ongoing and onerous obligation on licensees

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34 *Id.*

35 *See generally* AT&T-Leap, Revised Appendix A to the Second Level Protective Order, WT Docket No. 13-193, 28 FCC Rcd 15860 (2013) (providing that "detailed or granular . . .information about specific facilities, including . . . cell sites, or maps of network facilities" warranted highly confidential treatment); Comments of CTIA – The Wireless Association®, ET Docket No. 14-165, GN Docket No. 14-166, GN Docket No. 12-268, at 36-37 (Feb. 4, 2015) ("CTIA Unlicensed/Wireless Microphone Comments").

36 *See* National Association of Broadcasters, Petition to Amend Sections 47 C.F.R. 15711(b) and 47 C.F.R. 15717, RM-11745 (Mar. 19, 2015).

37 *See* CTIA Comments at 8; CTIA Unlicensed/Wireless Microphone Comments at 37-38.

would multiply the complexity of the post-auction 600 MHz environment[38] and thwart the Commission's stated goal of "promot[ing] ready access to the repurposed spectrum by 600 MHz wireless licensees when and where they need it."[39] Once a licensee intends to commence service in a PEA, it should be able to freely and easily access its licensed spectrum without the need to communicate the precise locations of its radiofrequency transmissions or the fear of impingement from lingering secondary operations.

IV. CONCLUSION

AT&T appreciates the opportunity to provide further input on the Commission's proposed approach to transitioning secondary and unlicensed users out of the repurposed broadcast spectrum. The Commission should adopt a simple and straightforward approach to transitioning the 600 MHz band after the auction concludes. At the latest, secondary and unlicensed users should be required to vacate the band by the end of the post-auction transition period of 39 months. Wireless licensees should also be able to clear such users from PEAs earlier, via 120 days' notice that it intends, in good faith, to begin any radiofrequency transmissions in a given PEA. Licensee's exclusive use rights should be protected with an expedited process for removing operators that fail to vacate the spectrum within the applicable timeframe. By implementing the framework AT&T has advocated in this proceeding, the

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38 *See* CTIA Unlicensed/Wireless Microphone Comments at 38 (explaining that because commercial wireless licensees constantly modify their base stations and frequencies to meet consumer demands, updating the database would be a substantial undertaking).

39 *Incentive Auction Report and Order* ¶ 655.

Commission will help facilitate a smooth and successful transition to the post-auction 600 MHz band environment.

Respectfully submitted,

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